

STATE OF MICHIGAN
COURT OF APPEALS

JAMES A. STIFFLER,

Plaintiff-Appellant,

v

SYNTHES,

Defendant-Appellee.

UNPUBLISHED
October 22, 1999

No. 211308
Clinton Circuit Court
LC No. 96-008001 NP

Before: Talbot, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order dismissing this products liability action with prejudice for failure to comply with a discovery order. We affirm.

Plaintiff argues that the trial court abused its discretion in dismissing his complaint as a sanction for failing to comply with a discovery order requiring "full and complete" answers to defendant's interrogatories by January 9, 1998. We disagree.

MCR 2.313(B)(2)(c) allows a trial court to impose a "just" sanction, including dismissal, for refusing to comply with a discovery order or failing to answer interrogatories pursuant to MCR 2.313(D)(1)(b). Because dismissal is a harsh sanction that should be taken cautiously, a trial court must carefully evaluate all available options on the record before imposing this sanction. *Hanks v SLB Management, Inc.*, 188 Mich App 656, 658; 471 NW2d 621 (1991). Factors the trial court should consider before imposing dismissal as a sanction include: (1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with discovery requests; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other provisions of the court's order; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. *Richardson v Ryder Truck Rental, Inc.*, 213 Mich App 447, 451; 540 NW2d 696 (1995).

After a thorough review of the record, we conclude that the trial court did not abuse its discretion in dismissing plaintiff's complaint for failure to comply with its December 10, 1997 discovery

order. Shortly after plaintiff filed this action in March 1996, defendant served him with interrogatories which requested, inter alia, that plaintiff set forth the basis for his claim that the product at issue was defectively designed and manufactured. Plaintiff failed to produce the information, claiming that he needed more time to test the allegedly defective product. Despite repeated extensions (given by both defendant via stipulation and the court via order), two discovery cut-off extensions, and two trial adjournments, plaintiff still failed to produce the requested information by October 1997. Finally, noting the numerous delays by plaintiff, the trial court entered an order requiring, under penalty of dismissal, that plaintiff produce the information by January 9, 1998. Despite the trial court's clear order, plaintiff provided defendant nothing but speculative, general information concerning the nature of the alleged defect and causation. Indeed, plaintiff responded to defendant's motion for dismissal by requesting even more time to perform a one-day test, which he claimed would establish that the product was defective. Under these circumstances, we conclude that the trial court did not abuse its discretion by enforcing its discovery order. *Thorne v Bell*, 206 Mich App 625, 633; 522 NW2d 711 (1994); *Hanks, supra* at 658.

Affirmed.

/s/ Michael J. Talbot

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey